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10/622,987	07/18/2003	Shanna Marie Cronan		3059

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EXAMINER

COURSON, TANIA C

ART UNIT PAPER NUMBER

2859

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/622,987

**Applicant(s)**

CRONAN, SHANNA MARIE

**Examiner**

Tania C. Courson

**Art Unit**

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. Although the amendment filed on November 23, 2004, states that corrections have been made to the term "velcro", the revised specification does not show these changes.

The use of the trademark "Velcro" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology (i.e. VELCRO, hook and loop fastener).

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

2. Claims 1-17 are objected to because of the following informalities:
- a) The claims lack the proper claim identifier (i.e. original, currently amended, etc.)

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 5, 8-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sexton, I (US 4,934,024).

Sexton, I discloses in Figure 5, an indicator and associated method comprising:

With respect to claims 1-3 and 5:

- a) an indicator (Fig. 5, grip member 12) for indicating the optimal position and orientation for holding a device (Fig. 5, handle 18), a means for affixing the indicator to the device (Fig. 5);
- b) wherein the indicator is shaped as one or more human hands (Fig. 5 and column 5, line 62 through column 6, line 2);
- c) wherein the human hands are a right human hand and a left human hand (Fig. 5 and column 5, line 62 through column 6, line 2);
- d) wherein the means for affixing the indicator to the device is an adhesive on the indicator (column 5, lines 48-50).

With respect to claims 8-10 and 12 :

- a) determining an optimal position and orientation for holding a device (Fig. 5, handle 18) and affixing an indicator to the device to indicate the optimal position and orientation (Fig. 5, grip member 12);
- b) wherein the indicator is shaped as one or more human hands (Fig. 5 and column 5, line 62 through column 6, line 2);

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- c) wherein the human hands are a right human hand and a left human hand (Fig. 5 and column 5, line 62 through column 6, line 2);
- d) wherein the means for affixing the indicator to the device is an adhesive on the indicator (column 5, lines 48-50).

5. Claims 1, 6, 8 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by McGowan (US 4,027,687).

McGowan discloses in Figure 5, an indicator and associated method comprising:

With respect to claims 1, 6, 8 and 13:

- a) an indicator (Fig. 16, tube 72) for indicating the optimal position and orientation for holding a device (Fig. 16, walker rail 62), a means for affixing the indicator to the device (Fig. 16);
- b) wherein the means for affixing the indicator to the device comprises Velcro on the indicator and corresponding Velcro on the device (Fig. 16, VELCRO, C2);

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 4, 7, 11 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sexton, I in view of Tassey et al. (US 6,237,266 B1) and Sisko et al. (US 5,657,783).

Sexton, I discloses an indicator and associated method, as stated above in paragraph 5.

Sexton, I further discloses the following:

- a) wherein the optimal position and orientation for holding the device is determined by a manufacturer of the device (column 3, line 66 through column 4, line 3);
- b) wherein the optimal position and orientation for holding the device is determined for a specific user of the device (column 3, line 66 through column 4, line 3);
- c) wherein the optimal position and orientation for holding the device is determined by a medical professional (column 3, line 66 through column 4, line 3).

Sexton, I does not disclose wherein the indicator is made of a material that is visible in the absence of an external light source and wherein the device is a medical walker.

Tassey et al. teach a visual indicator and associated method that consists of wherein the indicator is made of a material that is visible in the absence of an external light source (column 4, lines 45-52). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the indicator and associated method of Sexton, I, so as to include the indicator made of a material that is visible in the

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absence of light, as taught by Tassey et al., so as to provide a greater enhancement in visibility during use of the indicator.

Sisko et al. teach a device having an indicator and associated method that consists of wherein the device is a medical walker. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the indicator and associated method of Sexton, I, so as to include wherein the device is a medical walker, as taught by Sisko et al., so as to provide an alternate device for utilizing the indicator.

### ***Response to Arguments***

8. Applicant's arguments filed on November 23, 2004 have been fully considered but they are not persuasive.

9. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., for an individual's safety) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

10. Regarding the applicant's argument that Sexton's reference addresses three-dimensional and not one-dimensional as does the invention, the Sexton reference may encompass more elements than the invention as long as it addresses the claimed subject matter.

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11. In response to applicant's argument that the Sexton and McGowan reference, respectively, have different motives, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

12. Applicant's comment regarding the Sisko reference is not persuasive because Sisko is only used to show that it is already known in the art to that a device is a medical walker. For further clarification, the Sexton reference is the primary reference and the Sisko reference is the secondary reference.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.



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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
February 22, 2005

CHRISTOPHER W. FULTON  
PRIMARY EXAMINER